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September 18, 1996

By Hand

Ms. Michele Farquhar
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5002
Washington, DC 20554

Re: CC Docket No. 92-297
Local Multipoint Distribution Service

Dear Ms. Farquhar:

On behalf of CellularVision USA, Inc.[1] ("CellularVision"), the recognized global pioneer of the wireless, broadband Local Multipoint Distribution Service ("LMDS") technology, and the only commercially licensed LMDS provider in the United States, we are writing in response to a recent letter from Sierra Digital Communications, Inc.'s ("Sierra Digital") counsel to Suzanne Toller dated September 10, 1996.

In its Reply Comments in the Fourth Notice of Proposed Rulemaking ("Fourth NPRM"), CellularVision offered a compromise proposal for use of the 31.0-31.3 GHz spectrum that would facilitate the most prompt and robust deployment of LMDS while minimizing potential displacement of the limited current point-to-point users of the 31 GHz band. Building on the Commission's reasoned proposal to allocate 300 MHz at 31 GHz to LMDS, CellularVision's compromise proposed that LMDS be allocated the middle 250 MHz of the 31 GHz band on a primary basis, and that 31 GHz point-to-point systems be allocated the lower and upper 25 MHz blocks of the 31 GHz band on a primary basis, with LMDS afforded secondary status in that 50 MHz.[2] In support

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[1] CellularVision is publicly traded on the NASDAQ National Market System under the symbol "CVUS."

[2] See Reply Comments of CellularVision, August 22, 1996, p.9.

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of this proposal, CellularVision submitted a technical paper demonstrating that the 31 GHz band currently is being used very inefficiently by a small number of licensees,[3] and that with an increase in frequency stability and use of narrower channels, existing point-to-point uses of the 300 MHz 31 GHz band can be accommodated in 50 MHz, furthering the Commission mandate to maximize spectrum efficiency.[4]

In its September 10 letter, Sierra Digital, a manufacturer of 31 GHz point-to-point equipment, does not challenge CellularVision's technical data supporting the proposition that current point-to-point applications in the 31 GHz can be accommodated in a total of 50 MHz if the equipment used is more spectrum efficient. Rather, Sierra Digital claims that such improvements in 31 GHz point-to-point spectrum efficiency would require equipment and system modifications that would make 31 GHz systems too costly. Sierra Digital further asserts that 31 GHz point-to-point users should not be required to finance more spectrum efficient equipment, and instead should be allocated exclusive access to at least 150 MHz of the 300 MHz at 31 GHz.

Importantly, Sierra Digital makes no mention of the fact that the current limited number of 31 GHz licensees are using this valuable spectrum on a non-protected basis. Accordingly, as noted by numerous commenters in this proceeding,[5] the current licensees were fully aware of the fact that their non-protected access to the spectrum was not without risk, particularly in an environment where the Commission, at Congress' urging, is appropriately seeking the fullest, most efficient use of all of the spectrum, including this generally underutilized 31 GHz spectrum now proposed to be auctioned for multi-purpose LMDS use. Now, faced with the prospect that the new spectrum efficient LMDS will be deployed in the same 300 MHz of spectrum it currently uses on a non-protected basis, Sierra Digital is asking the Commission to ignore its well-established commitment to a pro-competitive spectrum efficient policy

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[3] The Commission's database apparently indicates that there are only 27 licensees operating such systems in the 31 GHz band, and Sierra Digital has specifically cited only two additional licenses. See Comments of Sierra Digital, August 12, 1996, footnote 4.

[4] See Reply Comments of CellularVision, p.9, and Exhibit 1, Efficient Point-to-Point Use of the 31 GHz Band, prepared by Jeffery A. Krauss, Ph. D.

[5] See Letter from Robert L. Pettit, Counsel for Texas Instruments, Inc., to William F. Caton, CC Docket No. 92-297, September 16, 1996.

simply because Sierra Digital feels that equipment modification costs are too high.

Throughout the Commission's deliberations in formulating the 28 GHz band plan, the Commission noted that with LMDS's cellular architecture "a very high level of frequency reuse is possible."[6] Nonetheless, in order to accommodate different types of services in the 28 GHz spectrum, LMDS has been reduced from the unencumbered and contiguous 2000 MHz allocation proposed in the First NPRM,[7] to the current non-contiguous 850 MHz plus an encumbered 150 MHz allocation in the 28 GHz band adopted in the First Report and Order, with an additional 300 MHz in the 31 GHz band proposed in the Fourth NPRM. As a result, the LMDS industry has been required to accept a series of costly compromises throughout this protracted proceeding which have increased the complexity of LMDS system design and ultimately will impact the cost of LMDS equipment and the provision of LMDS services.

Unfortunately, Sierra Digital seems to ignore the legal relevance as well as the harsh reality of the 28 GHz band plan compromise where the Commission required the nascent LMDS industry to suffer additional design and equipment costs in order to advance the Commission's bedrock goal of the most robust and efficient use of all spectrum. Like the 28 GHz spectrum proceeding, the Commission, in dealing with the 31 GHz spectrum, must likewise insist on the most efficient use of the spectrum by Sierra Digital and other 31 GHz equipment manufacturers who have been able to inefficiently use far more of the 31 GHz spectrum than is needed for their operations. In view of the enormous potential to consumers from the prompt nationwide licensing of the multi-purpose LMDS technology and in view of the public interest benefits associated with LMDS auctioning of the largely underutilized 31 GHz spectrum, the Commission should not allocate 150 MHz of 31 GHz spectrum on a de facto primary basis to the limited group of current 31 GHz point-to-point licensees, when 50 MHz of spectrum efficiently utilized could meet their needs if tighter stability equipment is used.

Accordingly, CellularVision urges the Commission to promptly conclude the protracted LMDS proceeding with the allocation of at least 250 MHz at 31 GHz for LMDS, consistent with the compromise proposal set forth by CellularVision in its

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[6] See Fourth NPRM, FCC 96-311, released July 22, 1996, para. 14.

[7] See First Notice of Proposed Rulemaking, 8 FCC Rcd 557, para.20 (1993).

Reply Comments. Additionally, CellularVision urges the Commission to commence the auctioning of LMDS licenses of at least 1.250 MHz each in BTAs throughout the country before the end of 1996 so that the enormously promising multi-purpose LMDS industry can provide consumers with the interactive video, telephony and data competition that LMDS represents against incumbent telco and cable providers throughout the United States.

Sincerely,

Michael R. Gardner
Counsel for CellularVision USA, Inc.

cc Chairman Reed E. Hundt
Commissioner James H. Quello
Commissioner Rachelle B. Chong
Commissioner Susan Ness
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John Nakahata
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David P. Wye
Robert James
Karen Brinkmann
Susan E. Magnotti
William F. Caton, 28 GHz Rulemaking Record
Mitchell Lazarus, Counsel for Sierra Digital Communications, Inc.